The Solicitors' Journal

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CURRENT TOPICS

Ministerial Posts

THERE are three ministerial posts apart from the Lord Chancellor's office (on which we have already commented) in which lawyers by virtue of their calling have a particular interest. These are the offices of Home Secretary, Attorney-General and Solicitor-General. The unusually wide scope of the Home Secretary's duties embraces many which, if not of a judicial character, impinge on the administration of justice. For advising the Crown in the exercise of the prerogative of mercy, the appointment of stipendiary magistrates, metropolitan police magistrates and recorders, the general supervision of the police and penal institutions and the general control of aliens, much legal knowledge is needed, and a lawyer has not infrequently been chosen for the Home Office. There have, however, been Home Secretaries who have succeeded without any legal training. The examples of WINSTON CHURCHILL as well as of the Home Secretary in our war-time Government leap to the mind. The present Home Secretary, Mr. T. CHUTER EDE, comes to his office with some considerable knowledge and experience of the work of the magistrates' courts. He first sat as a justice of the peace in 1920–22, when he was Chairman of the Epsom Urban District Council. He was sworn in as a justice for the County of Surrey on 2nd January, 1923, being one of the last justices to pay the sum of £2 for that privilege, and since 1925 he has served on the Lord Lieutenant's Advisory Committee for the county. He is also a member of the Appeals Committee of Surrey Quarter Sessions and County Council representative on the Standing Joint Committee for Surrey. Those who have appeared before him in the Epsom Court, where he has regularly sat, consider him an ideal magistrate, with what is, for a layman, an unrivalled knowledge of the law, and an eminently judicial mind. In the case of the other two offices in which lawyers are interested, the accent is on youth, but not on lack of attainment. Sir HARTLEY SHAWCROSS, K.C., who succeeds Sir DAVID MAXWELL FYFE, K.C., as Attorney-General, is considered one of the new really brilliant advocates of to-day, and Sir FRANK SOSKICE had earned the reputation of possessing a subtle and ingenious mind. During the war Sir Hartley Shawcross was Regional Commissioner for the North-Western Region, and since 1943 he has been Chairman of the Catering Wages Commission. Sir Frank Soskice served in the Army during the war.

Lord Morison

IT is with sorrow that we announce the death of LORD MORISON on 28th July. A senator of the College of Justice in Scotland from 1922 to 1937, he had strong affiliations with the legal profession in England, having been called to the Bar by the Middle Temple in 1899, eight years after his call to the Scottish Bar. He took silk in 1906 and in 1921 he was elected a Bencher of Gray's Inn, of which he was Treasurer in 1936 and Vice-Treasurer in 1937. From 1913 to 1920 he was Solicitor-General for Scotland, and in 1920 he became Lord Advocate. As Senior Advocate Depute 1908–10 he is remembered for the assistance which he rendered in the famous trial of Oscar Slater. As a member of the Fishery Board, Lord Morison worked hard to secure the future of the Scottish fishing industry during one of the most critical periods in its history, and it was during his term of office that important research was commenced concerning the migration of herring. Lord Morison was a great judge, and what is equally important, a man to whom nothing human was alien.

The Bench and the Clergy

SURVIVALS are in some cases picturesque and attractive. In other cases, whatever their historic justification, they are merely unfair and of ill effect. It is to the latter class that we submit that the disability of a clergyman of the Church of England to serve as a magistrate belongs. The Coalville Urban District Council has protested against a letter from VISCOUNT SIMON, Lord Chancellor in the late Government, informing them that a vicar must not act as magistrate. The letter gave the information that successive Lord Chancellors for the past seventy years or more have declined to appoint beneficed clergymen as magistrates. As Mr. J. CARTER wrote in *The Times*, of 4th August: "Nonconformist ministers and Presbyterians of Scotland may take seats in Parliament, accept knighthoods, if offered, become magistrates, in fact are ordinary citizens of this realm. Only the English clergy are subject to repression by the State. A clerical magistrate would often be a great boon, especially in a district where there is no suitable layman available." The authority for this anomaly is a statement by LORD CAIRNS, L.C., in the House of Lords that "he had found that the rule was that where the Lord Lieutenant recommended a clergyman to be appointed to the bench, the holder of the Great Seal requested the Lord Lieutenant to consider whether there was any layman in the county qualified to be placed on the bench, and unless the Lord Lieutenant said that it was quite impossible to discover a layman so qualified, the holder of the Great Seal declined to appoint a clergyman" (19 SOL. J. 896). This injustice has the effect of excluding from this important

branch of voluntary service a class of persons who by reason of both their qualification and experience are most fitted for this type of work.

Solicitors and Valuations

A NOVEL criticism of the activities of solicitors appears in a letter signed "Lancastrian" in the *Estates Gazette* of 4th August, 1945. The writer complains that there was a tendency before 1939 for members of the legal profession to deal with values and valuations. This "trespass," as the writer calls it, has, to use his own words, "grown to a remarkable extent" during the war. Solicitors have been committing the grave iniquity of discussing valuations of properties with district valuers without employing professional valuers and have even themselves discussed with requisitioning authorities compensation rents under s. 2 (1) (*a*) of the Compensation (Defence) Act, 1939. It is further alleged in the letter that solicitors have in fact received fees as agreed between the Treasury and the Chartered Surveyors Institution. The writer concludes that the subject ought to have the attention of The Law Society. The answer to all this is quite plain. There is no rule of statute or common law or professional etiquette which forbids a solicitor to negotiate on behalf of his client without the backing of an expert opinion, nor is such an opinion always necessary. It is an original notion, to put it mildly, that valuers have a right to be employed whenever values are relevant to a dispute. Solicitors have a much better right to ask that estate agents be forbidden to charge fees equal to and in some cases in excess of solicitors' fees for providing incoming tenants with printed forms of leases, a practice which, it ought to be said, is by no means unknown. There is no evidence that responsible institutions in any way countenance this practice, but it undoubtedly exists, and solicitors only take action when a person without the qualification of a solicitor either pretends to be a solicitor, or draws a document for clients where such documents are required to be under seal. Valuers have no corresponding privilege. The suggestion that an expert witness has some exclusive right of employment in every case where his evidence might be useful only has to be expressed in order to demonstrate its absurdity.

International Crimes

A GREAT event in the history of international law took place on 8th August, 1945, when the representatives of the United Kingdom, the United States, Russia and France signed an agreement establishing an international military tribunal before which the more important war criminals of the 1939–45 war will be tried. The accused are those whose crimes have no particular geographical location. The agreement came into force on the day of its signature, and is to remain in force for one year. Thereafter it is to continue subject to the right of any signatory to give one month's notice of intention to terminate it. Each signatory is to appoint one member and one alternate, so that the tribunal will consist of four members and four alternates, the latter being present at all sessions, but only acting if his corresponding member is ill or otherwise unable to act. Provision is made for the setting up of other tribunals in case of need. The following acts are crimes triable by the tribunal: (*a*) Crimes against peace, namely planning, preparation, initiation or waging of war of aggression, or a war in violation of international treaties, agreements, or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing; (*b*) war crimes, namely violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity; (*c*) crimes against humanity, namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecution on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the tribunal, whether or not in violation of the domestic law of the country where perpetrated. Leaders, organisers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan. All lawyers will find material for study in the details of the procedure of trial set out in the agreement. Should this machinery be effective then there will indeed be hope for mankind. Justice ROBERT H. JACKSON's impressive declaration which concludes the agreement contains the following statement, which sums up the matter in a few words: "If we can cultivate in the world the idea that aggressive war-making is the way to the prisoner's dock rather than the way to honours, we shall have accomplished something towards making the peace more secure."

Audience before Administrative Tribunals

THERE has been an unfortunate tendency in recent legislation to provide for the exclusion of the legal profession from audience before certain Departmental tribunals. In listing the advantages and disadvantages of administrative tribunals, Dr. C. K. ALLEN's excellent recent work on "Law and Orders" (p. 169) noted "that they often, by the exclusion of trained lawyers to represent the parties, deny themselves the advantage of a full and thorough presentation of the issue." The President of the Law Council of Australia, Mr. DAVID MAUGHAN, K.C., in his annual address on 28th April, 1945, made a detailed examination of the problem. The following extracts from his speech (*Law Institute Journal*, 1st June, 1945) are worth quoting: "The experience of judges (and I have had two long periods as a Justice of the Supreme Court of New South Wales myself) and of arbitrators is that it is the layman who usually embarks on interminable legal argument . . . My experience as a judge was that the personal litigant when he is a layman wasted far more time than even the most long-winded lawyers, and thereby delayed the work of the court. . . . In fact, my whole experience has been that in contests before any tribunal, . . . there is a grave danger of a miscarriage of justice when the interests of a litigant are handled by a non-lawyer. . . . With regard to the ethical standards of people who practise as advocates, I may point out that before being admitted as a member of the legal profession an applicant has to satisfy the courts of his good character and conduct and has to maintain his satisfactory standards in this respect throughout this career. On the other hand, persons who are not members of the legal profession may consist of any one of the following classes, namely: (*a*) Persons who have been struck off the Rolls or disbarred for misconduct; (*b*) persons who have been refused admission to the profession for misconduct; (*c*) criminals; (*d*) persons who, though they have not a criminal record, have a low standard of conduct. . . . It has been brought under my notice officially as President of the Law Council of Australia that persons of these types are carrying on practice before tribunals from which the legal profession is excluded. . . . Members of the legal profession, both senior and junior, appear for persons of small means or of no means at all without charging any fees . . . One protection that might be afforded to litigants against the charging of excessive fees was referred to in the report of the Regulations Advisory Committee to the Federal Government last year. . . . The tribunal should be given power to fix a maximum fee for appearance . . . It had come to our notice that some of these non-legal advocates were actually charging higher fees to their clients than would be charged by a solicitor or by a barrister accustomed to appear before the inferior courts." A mere lawyer may be expected to be a little biased on this issue, but to our mind Mr. Maughan's arguments seem not merely strong, but unanswerable.

JOINT TENANCIES

PEOPLE seem somewhat confused as to the effect of the recent legislation on joint tenants. They understand that you can no longer have tenancies in common in the legal estate of land.

The Law of Property Act, 1925, s. 1 (6), provides that " a legal estate is not capable of subsisting or of being created in an undivided share in land." Again, we read that " an undivided share in land shall not be capable of being created except under a trust instrument or under the Law of Property Act, 1925, and shall then only take effect behind a trust for sale " (S.L.A., 1925, s. 36 (4)). Consequently, they are aware that in theory the tenants in common have only an equitable interest in the proceeds of sale and in the net rents and profits of the hereditaments until sale. We say " in theory," for, as there is a power to postpone the sale implied in every trust for sale of land unless a contrary intention appears (L.P.A., 1925, s. 25), the property often remains unsold, though notionally converted into personalty (*Re Kempthorne* [1930] 1 Ch. 268).

Trustees can hold land as joint tenants upon trust for sale, so that there is no actual objection to land being held in joint tenancy. The legal estate in such a case remains intact. In old days a beneficial joint tenancy could easily be converted into a tenancy in common. Topham's " New Law of Property " (2nd ed., p. 68) states that before 1926 any joint tenant might sever the joint tenancy " by (i) an agreement to sever, (ii) by a sale or transfer of his share to another person, or (iii) by a mere agreement to sell or transfer, e.g., by an agreement to make mutual wills," but he could not sever it by an ordinary will (*ibid.*).

In *The Estate of Mary Heys* [1914] P. 192, a husband and wife were joint tenants of house property, so that the wife as survivor would have taken all that property unless they had severed the joint tenancy. They made what are sometimes called " mutual wills." They were executed on the same day and the husband gave all his property to his wife absolutely if she survived him ; but, if she did not, certain other provisions were to have effect ; while the wife gave all her property to her husband absolutely if he survived her ; but, if he predeceased her, there were similar provisions to those in the husband's will. Sir Samuel Evans, P., held " that the agreement or arrangement made between the husband and wife to execute the two wills, and the execution thereof, severed the joint tenancy and created a tenancy in common."

In *Gould* v. *Kemp*, 2 My. & K. 304, Lord Brougham said : " It is certainly undoubted law that a joint tenant cannot devise even his own share ; for as the will cannot take effect until his decease, and at that instant the share vests in his companion, so were he even to devise to his companion, he would take, not by force of the devise, but by the survivorship, and would be in of the original estate." But he held that a bare agreement to sever has the force of actual severance (p. 310). The difficulty often is to ascertain if there was such an agreement.

To prevent the splitting up of the legal estate into undivided shares, it is enacted by the Law of Property Act, 1925, s. 36 (1), that " where a legal estate (not being settled land) is beneficially limited to or held in trust for any persons as joint tenants, the same shall be held on trust for sale, in like manner as if the persons beneficially entitled were tenants in common, but not so as to sever their joint tenancy in equity." The result of that enactment is simple enough. Formerly a conveyance to A and B in fee simple beneficially made A and B joint tenants of the legal estate, with power for either of them to sever the joint tenancy, and the equitable interest followed the legal. Now A and B hold the property in trust for sale and hold the proceeds of sale and the net rents and profits until sale in trust for themselves as joint tenants, with the benefit of survivorship (Topham, *supra*, p. 68 ; Wolstenholme and Cherry's Conveyancing Statutes, 12th ed., p. 284 ; Halsbury's Laws of England (Hailsham Edition), vol. 27, p. 660).

It is also expressly provided that a joint tenant can release his interest to the other joint tenants and can sever a joint tenancy in an equitable interest, whether or not the legal estate is vested in the joint tenants (L.P.A., 1925, s. 36 (2)). So that A and B can by severing hold the legal estate as joint tenants in effect in trust for themselves as tenants in common. Under the old law, Farwell, L.J., held that they could not do this (*Re Selous* [1901] 1 Ch. 921). In " Williams on Vendor and Purchaser " (4th ed., pp. 501–2) it is suggested that, though his lordship had come to the right conclusion in *Re Selous*, it was for wrong reasons, as " there is nothing to prevent a man from being a trustee for himself and others, or from being one of several trustees for himself."

A joint tenant who desires to sever the joint tenancy in equity can do so by giving " to the other joint tenant a notice in writing of such desire, or do such other acts or things as would, in the case of personal estate, have been effectual to sever the tenancy in equity " (proviso to s. 36 (2)). It is further provided that " nothing in this Act affects the right of a survivor of joint tenants, who is solely and beneficially interested, to deal with his legal estate as if it were not held on trust for sale " (*ibid.*). A purchaser would generally require some evidence that the survivor was " solely and beneficially interested," if he purported to deal with the property as if it were not held on trust for sale. On the other hand, if the sale was under the trust for sale, there must be two trustees to give a receipt for the proceeds of sale (L.P.A., 1925, s. 27 (2)), so that the survivor may have to appoint a new trustee to act with him. The solicitor acting for the trust should not be appointed as a rule, owing to difficulty connected with profit costs.

In spite of the power of postponement, the trust for sale must prevail, unless all the trustees for sale agree in exercising that power (*Re Mayo* [1943] Ch. 302). That rule may clash with the provision that statutory trustees must give effect to the wishes of a majority of the beneficiaries (L.P.A., 1925, s. 26 (3)). For instance, A, B and C are three joint tenants, and C desires a sale and the other two do not. What is to be done ?

In *Re Buchanan-Wollaston's Conveyance* [1939] Ch. 738, four persons took a conveyance of land as joint tenants, and they entered into a deed of mutual covenant that they would not deal with the land except with the unanimous consent of all parties or by a majority vote. The Court of Appeal refused to order a sale of the property, and so assist one of the parties to commit a breach of his covenant, when the other parties were opposed to a sale.

A CONVEYANCER'S DIARY

THE RIGHTS OF PREFERENCE AND RETAINER

SINCE 1925 a personal representative is entitled to exercise his right to prefer creditors or his right of retainer in respect of all the assets of the deceased : Administration of Estates Act, 1925, s. 34 (2). Previously these rights had only been exercisable in respect of " legal assets " : for example, it was held that assets forming the separate property of a married woman were " equitable assets " under the Married Women's Property Act, 1870, and that therefore the right of retainer did not exist in respect of them : *Re Poole* (1877), 6 Ch. D. 739. Again, there was no retainer in respect of real estate, even after the Land Transfer Act, 1897, which made the realty pass to the real representative and not to the heir : *Re Williams* [1904] 1 Ch. 52.

The right to prefer creditors is a right to pay one or more creditors in full or in part, notwithstanding that such act may result in there being a proportionately smaller payment, or no

payment at all, for other creditors in the same degree. According to the learned editors of "Wolstenholme," 12th ed., p. 1462, this right is "essential for the protection of a representative acting in good faith." While it is easy to see that a representative ought not to be personally chargeable with debts of which he did not know, in the absence of gross neglect to take steps to ascertain the creditors, it seems a strong thing to say that it is "essential for the protection of a representative acting in good faith" that if he has a sum of £100 available for creditors and has to deal with two simple contract creditors, A and B, to each of whom the estate owes £100, he must be entitled to give the whole £100 to A, for any reasons which occur to him, good, bad or merely irrelevant. Be that as it may, the right is preserved by the legislation of 1925, and its scope is extended to all assets of the deceased. The only fetter upon it seems to be the administrative one that a creditor who takes out letters of administration has to undertake in his bond to distribute the assets rateably.

If the personal representative can prefer A's debt to that of B, there is no reason why he should not prefer his own. Indeed, it has been said that it would be unjust not to allow him to do so, since he would be at the mercy of any creditor who chose to sue, since a judgment debt would be in a higher degree, and he could not likewise improve the standing of his own, since he could not sue himself. A personal representative therefore has a right to retain assets of the deceased to meet his own debt as against other creditors in the same degree. This right of retainer is one which Kay, J., stated in *Re Jones*, 31 Ch. D. 447, "produces inequality (and therefore) is never assisted," by the court. But, like that of preference, it may, since 1925, be exercised in respect of all the assets of the deceased: A.E.A., s. 34 (2).

It seems to be generally agreed that both the right of preference and that of retainer cease upon the making of a judgment for administration. But the mere starting of proceedings for administration is not enough. Thus, in *Re Radcliffe*, 7 Ch. D. 733, the deceased died insolvent in July, 1876; in January, 1877, a creditor issued a writ for administration. The executrix, with notice of the writ and after giving an undertaking to enter appearance, paid two creditors in full. This transaction was held to be valid. In giving judgment, Jessel, M.R., observed that "the only way to prevent such payments being made is by the plaintiff, upon issuing the writ, immediately applying for and obtaining a receiver." After this dictum a practice grew up of making applications for receivers with the express intention of preventing the exercise of the right of preference. But later it was pointed out that a "plaintiff in an administration action is only entitled to interim relief against the administrator or executor where a case is shown of assets being wasted. The law allows the administrator or executor to prefer one creditor to another, and there is no equity which entitles the court to interfere except after a judgment for administration": see *per* Chitty, J., in *Harris* v. *Harris*, 35 W.R. 710, and see *Re Wells*, 45 Ch. D. 569, where the matter was fully discussed. In consequence, it can be said that the court will not appoint a receiver for the purpose of defeating the right of preference, but that if a receiver is appointed, the right will be defeated. The right of retainer is likewise affected by the appointment of a receiver, in that it is not available against assets got in by the receiver. For the right only applies to assets actually or constructively in the possession of the personal representative and the receiver intercepts the assets collected by him before they reach the personal representative: see *Pulman* v. *Meadows* [1901] 1 Ch. 233. But apparently the right still exists as regards assets originally got in by the personal representative before the appointment of the receiver, even after he has handed them over to the receiver: see *Re Harrison*, 32 Ch. D. 395.

The right of retainer used in former days to be applicable to any debt owing to the personal representatives either alone or jointly with others, and whether he was beneficially entitled to the debt or entitled as a trustee. Thus, in *Re Hubback*, 29 Ch. D. 935, it was said: "It is established that one of several executors, if a creditor, may retain, just as if all were creditors, on this ground, that if one executor is a creditor, as an executor cannot sue himself, there is nobody who can sue, and he will therefore be placed at a disadvantage if he cannot get that priority which another creditor by suing can get": *per* Cotton, L.J., at p. 941. And in that case it was held that the right was available in respect of a mortgage debt due from the testator to a body of trustees of whom the executor was one. Indeed, it seems to have been contemplated in *Re Wells*, 45 Ch. D. 569, at pp. 572, 573, that a personal representative who was also a creditor of the testator's estate in his capacity as trustee of another trust could be compelled by the court at the suit of the beneficiaries of that other trust to exercise the right of retainer. I cannot find that any such thing was in fact ever decided, and indeed it would be remarkable that this right, which becomes vested in the creditor by reason of his executorship, should become an asset of a trust on which he holds his right of action to recover the debt. The trust and the executorship are two quite separate things, and the right of retainer is an incident of the latter of them only.

However, it is now provided by A.E.A., s. 34 (2), that "the right of retainer shall only apply to debts owing to the personal representative in his own right whether solely or jointly with any other person." In *Re Rudd* [1942] Ch. 421, Morton, J., held that the words "in his own right" meant "beneficially," so that a corporate executor was not entitled to retain a debt owing by the testator to itself and another as trustees of a trust. There was some attempt to argue that "in his own right" meant something other than "beneficially," but there can be no real doubt of the correctness of this decision. Its consequences are, however, puzzling. Morton, J., said that the right which is now in dispute (is) a right of retainer and not a right of preference, so that it was subject to the new statutory restriction on the right of retainer. But what if, instead of purporting to retain, the executor had purported to prefer? Is there any rule that an executor cannot prefer a debt owing to himself alone or jointly with others? I can find no authority that he cannot, though doubtless it was simpler, before the right of retainer was restricted, to exercise that right. Again, if there are two executors, one of whom is a trustee-creditor, would there be anything to prevent his co-executor exercising his right to prefer that debt? An executor can act severally, and the transaction suggested can hardly be called retainer. There are thus a number of unsettled points. In former days the court may not have assisted the right of retainer, but it does not at all follow that a litigant who can show that this right would clearly have been available to him under the law in force before 1926 will lightly be denied that right now. On the contrary, A.E.A., s. 34 (2), cuts down an existing right; on ordinary principles it must be strictly shown that each case falls within the new restriction.

LANDLORD AND TENANT NOTEBOOK

DETERIORATION OF CONTROLLED PROPERTY

A NUMBER of points of interest arose in a recent case under the Small Tenements Recovery Act, 1838, to which my attention has been drawn by a correspondent, who kindly supplies a full statement of the facts and arguments. The sort of case the Ridley Committee may well have had in mind when recommending the repeal of the statute in question; but that is another matter.

The applicant bought, after 6th December, 1937, the reversion to controlled property consisting of a cottage with garden and small orchard: the tenancy was also within s. 2 of the Housing Act, 1936 (landlord responsible for repairs, fitness for habitation standard). There was no written tenancy agreement. The cottage being in disrepair, the garden badly neglected, and the fruit trees in the orchard having been

mutilated by the tenant's children, the landlord gave notice to quit, and in the proceedings relied upon para. (*b*) of Sched. I to the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933. It will be convenient to set this provision out, italicising parts to which reference will later be made; it runs: "A court shall . . . have power to make or give an order for the possession of any *dwelling-house* to which the principal Acts apply or for the ejectment of a tenant therefrom without proof of suitable alternative accommodation (where the court *considers it reasonable so to do*) if—the tenant or any person residing or lodging with him or being his sub-tenant has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has been convicted of using the *premises* or allowing the *premises* to be used for an immoral or illegal purpose, or the condition of the *dwelling-house* has, in the opinion of the court, deteriorated owing to acts of *waste* by, or the *neglect or default* of, the tenant or any such person, and, where such a person is a lodger or a sub-tenant, the court is satisfied that the tenant has not . . . taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant."

The applicant did not seek to rely on the disrepair of the cottage itself, but asked for a warrant on the ground of the condition of garden and orchard. And the first point taken by the defence was that those two items were not covered by the expression "dwelling-house" in the phrase "the condition of the dwelling-house has, in the opinion of the court, deteriorated."

My own view is that the arguments for and against almost balance. Attention was directed to s. 16 (1) of the 1933 Act: "'Dwelling-house' has the same meaning as in the principal Acts, that is to say, a house let as a separate dwelling or a part of a house being a part so let"; but this does little towards defining for the purpose of such a dispute; it is no use unless one knows or agrees what is meant by "house." It is connotation rather than denotation that we are now concerned with: the authorities showing that property is controlled though it includes a shop or garage, etc., are not in point, nor are *Neale* v. *del Soto* [1945] 1 K.B. 144, and the other cases mentioned in the "Notebook" of 14th July (89 SOL. J. 323), which illustrate the minimum requirements and essentially define "dwelling" rather than "house."

If one looks at the surrounding words of the enactment itself, one finds two features apparently pointing different ways. On the one hand, the main provision speaks of "an order for the possession of a dwelling-house," which suggests that no distinction is to be drawn between one thing comprised in a letting and another, once there is a dwelling-house. On the other hand, the paragraph itself, immediately before coming to the deterioration provision, mentions "convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose": that there is no such offence known to the criminal law, which was due to "absence of technical drafting" (to cite the least unkind criticism uttered in *S. Schneiders, Ltd.* v. *Abrahams* [1925] 1 K.B. 301 (C.A.)), is immaterial: the point is, why specify "premises" in one provision and "dwelling-house" in the next unless different meanings are intended? Possibly the explanation is this: when dealing with user, what mattered was what the War Crimes Commission calls "geographical location" rather than structure.

If, in view of this conflict, one may consider, as has so often been done in cases under these Acts, the object of the enactment and the mischief to be remedied, it would appear to be this: tenants are given protection on terms, one being that they do and permit nothing to reduce the value of their landlords' capital. This points to a conclusion that, subject to the overriding requirement of reasonableness, a court may make an order though the actual living accommodation itself has not deteriorated. So it may well be that on a balance of all considerations, the paragraph does apply when matter other than the actual living accommodation has deteriorated.

What happened in the actual case was, I am told, that the justices held that "dwelling-house" included the garden but not the small orchard; but also found that the dwelling-house had deteriorated owing to the neglect or default of the tenant (though not asked so to find), and that they made an order for possession. On this my comment would be that it was, indeed, unnecessary for the landlord to leave the house out. The Housing Act, 1936, s. 2, may have imported into the tenancy agreement an undertaking that the house would be kept by him during the tenancy in all respects reasonably fit for human habitation; but that standard is, as Salter, J., said in *Jones* v. *Geen* [1925] 1 K.B. 659, a humble one, and the decision is authority for the proposition that the tenant in the case before the bench was contractually responsible for some repairs, i.e., those outside the "human habitation" standard, but within the "tenantable condition" standard set by the covenant implied by common law. So, apart from the question whether contractual liability was all that mattered, I think the justices were right in taking into consideration the condition of the cottage itself.

This brings me to the next point raised: it was contended by the respondent that there was no contractual liability on the tenant to keep the garden in good order. There is some authority to support the contention that the implied covenant does not oblige a yearly or lesser tenant to keep up a garden (*Martin* v. *Gilham* (1837), 7 A. & E. 540); but what I would not agree is that para. (*b*) of Sched. I is concerned with contractual liability. Not only does what has been said about the object of the provision militate against such an interpretation, but so does the fact that para. (*a*) is devoted to breaches of contract: non-payment of rent, or any other obligation of the tenancy, etc., broken or not performed. And waste, it should be remembered, is a tort and not a breach of contract (*Defries* v. *Milne* [1913] 1 Ch. 98 (C.A.)).

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mutilated by the tenant's children, the landlord gave notice to quit, and in the proceedings relied upon para. (*b*) of Sched. I to the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933. It will be convenient to set this provision out, italicising parts to which reference will later be made; it runs: "A court shall . . . have power to make or give an order for the possession of any *dwelling-house* to which the principal Acts apply or for the ejectment of a tenant therefrom without proof of suitable alternative accommodation (where the court *considers it reasonable so to do*) if—the tenant or any person residing or lodging with him or being his sub-tenant has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has been convicted of using the *premises* or allowing the *premises* to be used for an immoral or illegal purpose, or the condition of the *dwelling-house* has, in the opinion of the court, deteriorated owing to acts of *waste* by, or the *neglect or default* of, the tenant or any such person, and, where such a person is a lodger or a sub-tenant, the court is satisfied that the tenant has not . . . taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant."

The applicant did not seek to rely on the disrepair of the cottage itself, but asked for a warrant on the ground of the condition of garden and orchard. And the first point taken by the defence was that those two items were not covered by the expression "dwelling-house" in the phrase "the condition of the dwelling-house has, in the opinion of the court, deteriorated."

My own view is that the arguments for and against almost balance. Attention was directed to s. 16 (1) of the 1933 Act: "'Dwelling-house' has the same meaning as in the principal Acts, that is to say, a house let as a separate dwelling or a part of a house being a part so let"; but this does little towards defining for the purpose of such a dispute; it is no use unless one knows or agrees what is meant by "house." It is connotation rather than denotation that we are now concerned with: the authorities showing that property is controlled though it includes a shop or garage, etc., are not in point, nor are *Neale* v. *del Soto* [1945] 1 K.B. 144, and the other cases mentioned in the "Notebook" of 14th July (89 SOL. J. 323), which illustrate the minimum requirements and essentially define "dwelling" rather than "house."

If one looks at the surrounding words of the enactment itself, one finds two features apparently pointing different ways. On the one hand, the main provision speaks of "an order for the possession of a dwelling-house," which suggests that no distinction is to be drawn between one thing comprised in a letting and another, once there is a dwelling-house. On the other hand, the paragraph itself, immediately before coming to the deterioration provision, mentions "convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose": that there is no such offence known to the criminal law, which was due to "absence of technical drafting" (to cite the least unkind criticism uttered in *S. Schneiders, Ltd.* v. *Abrahams* [1925] 1 K.B. 301 (C.A.)), is immaterial: the point is, why specify "premises" in one provision and "dwelling-house" in the next unless different meanings are intended? Possibly the explanation is this: when dealing with user, what mattered was what the War Crimes Commission calls "geographical location" rather than structure.

If, in view of this conflict, one may consider, as has so often been done in cases under these Acts, the object of the enactment and the mischief to be remedied, it would appear to be this: tenants are given protection on terms, one being that they do and permit nothing to reduce the value of their landlords' capital. This points to a conclusion that, subject to the overriding requirement of reasonableness, a court may make an order though the actual living accommodation itself has not deteriorated. So it may well be that on a balance of all considerations, the paragraph does apply when matter other than the actual living accommodation has deteriorated.

What happened in the actual case was, I am told, that the justices held that "dwelling-house" included the garden but not the small orchard; but also found that the dwelling-house had deteriorated owing to the neglect or default of the tenant (though not asked so to find), and that they made an order for possession. On this my comment would be that it was, indeed, unnecessary for the landlord to leave the house out. The Housing Act, 1936, s. 2, may have imported into the tenancy agreement an undertaking that the house would be kept by him during the tenancy in all respects reasonably fit for human habitation; but that standard is, as Salter, J., said in *Jones* v. *Geen* [1925] 1 K.B. 659, a humble one, and the decision is authority for the proposition that the tenant in the case before the bench was contractually responsible for some repairs, i.e., those outside the "human habitation" standard, but within the "tenantable condition" standard set by the covenant implied by common law. So, apart from the question whether contractual liability was all that mattered, I think the justices were right in taking into consideration the condition of the cottage itself.

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As a solicitor's clerk from youth and managing and costs' clerk for many years past, entailing a life of industriousness and responsibility, I *vouch* that, *due to the poorness of a solicitor's own remuneration*, the wage (salary ?) that he can pay his clerks has always been, and is, insufficient, not enabling a clerk, if married and daring to have, say, one youngster to keep his little lot in more than bare respectability.

As we know, during the 1914–18 war, legal charges were increased by 33⅓ per cent. and recently by a further 16⅔ per cent., equalling 50 per cent.—these increases being on the basic charges of 3s. 6d. and 6s. 8d., *which were fixed over sixty years ago :—at which time 3s. 6d. would have been equal to a purchasing power of about 12s. 6d.* The 50 per cent. on 3s. 6d. now equals 5s. 3d., and 5s. 3d. now has a purchasing power of, say, 1s. 9d. !

Take an illustration of a solicitor's remuneration in the case of someone wanting to sell his house. Although he tries to dispense with an agent, he generally has to go to one. The agent's charge on a £1,000 sale is 5 per cent. on the first £300 and 2½ on £700, equals £32 10s. A solicitor's scale charge on £1,000 is 1½ per cent., equals £15 (fixed by Act of Parliament over sixty years back) plus 50 per cent. increase, equals £22 10s.

Take the sale at £1,000 of a house where the title to it has been compulsorily registered at the Land Registry. The solicitor's former remuneration of £15 was reduced, by Act of Parliament, by one-half, namely, to £7 10s. Now with the 50 per cent. increase on £7 10s. it is £11 5s. per £1,000 ; so giving first, a reduction by half, and secondly, an increase by half of the other half.

I respectfully suggest to the public that they do not ask their solicitor to reduce the amount of his account (but rather hint at an increase to it).

London, S.W.17. HENRY JEROME.
7th August.

REVIEWS

The Liabilities (War-Time Adjustment) Acts, 1941 and 1944, with Rules and an Index. Annotated by A. GRANVILLE SLACK, B.A., LL.M. (Lond.), of Gray's Inn, Barrister-at-Law. Second Edition. 1945. London : Butterworth & Co. (Publishers), Ltd. 10s. 6d. net.

The 1944 Act made numerous amendments to the 1941 Act, and also introduced new provisions intended to assist in the settlement of " moratorium debts," i.e., those which have accumulated in places to which the Defence (Evacuated Areas) Regulations apply. Persons evacuated were granted a moratorium in respect of rent, rates and certain other liabilities. Without incurring the disadvantages of bankruptcy, debtors in difficulty owing to the war may thus have their financial position adjusted. The beneficial provisions of the Acts are likely to be widely invoked, and practitioners will find all the necessary information collected in this volume in a handy and accessible form.

The Town and Country Planning Act, 1944. An annotated analysis of the Act in three parts. By DESMOND HEAP, LL.M., L.M.P.T.I., Deputy Town Clerk of Leeds. 1945. London : Sweet & Maxwell, Ltd. 21s. net.

Mr. Heap in his introduction chills his readers by emphasising the complications of the Town and Country Planning Act, 1944, and quotes the opinions of several Ministers in support. He need not fear that his readers will be incredulous, but it is doubtful whether he has approached the problem of enlightening them in the best way. The introduction, which in works of this kind, should be designed to lead the reader gently, tends to be little more than a summary of the Act, and shares many of its obscurities. On the other hand, in the third part of the book, there appears among the annotations an admirable series of short essays in every-day language on the reasons for and effects of each section. To quote an example, on p. 125 there is a general note to s. 9 which is an excellent summary of the objects of Pt. I of the Act. Surely the right place for this is at the beginning of the introduction. Again, the general note on s. 11 on p. 134 is far more revealing than the paragraph on the same section in the introduction. In other words, the reader of the introduction is expected to know a great deal, while the reader of the annotations is let down lightly : this seems to be the wrong way round.

The book suffers, " owing to the exigencies of the times," to quote the author's preface, from having the text of the Act entirely separate from the annotations, and it is unfortunate that this arrangement has had to be adopted. In spite of this defect the author has annotated the Act really well and with his usual clarity. The book will be a very great asset not only to the local government official but also to the solicitor in general practice who is being forced, usually against his will, to recognise that the law of town and country planning really exists.

The newness of the Act avoids the necessity for a table of cases, but, from reading the Act, it is quite clear that this is an omission which is certain to be speedily repaired. The index responded well to a " spot check," but contains no references to the pages of the introduction.

OBITUARY

MR. H. H. GEPP

Mr. Henry Hamilton Gepp, solicitor, senior partner of Messrs. Gepp & Sons, solicitors, of Chelmsford, Essex, died on Sunday, 15th July, aged sixty-nine. He was admitted in 1902, and was Under-Sheriff for Essex.

MR. W. HEELIS

Mr. William Heelis, solicitor, of Messrs. W. H. Heelis & Son, solicitors, of Ambleside, Westmorland, died recently, aged seventy-three. He was admitted in 1899, and was the husband of the late Beatrix Potter, the authoress of many books for children.

MR. A. H. OSBORNE

Mr. Antill Holbrook Osborne, solicitor, of Ashbourne, Derbyshire, died recently, aged sixty-six. He was admitted in 1907.

SOCIETIES

MANCHESTER LAW SOCIETY

ANNUAL MEETING

At the Annual Meeting of the Society held at the Law Library, Kennedy Street, Manchester, on 31st July, 1945, with Mr. G. F. Strange, the retiring President in the chair, the following officers were elected for the ensuing year : President, Mr. Robert John Walker ; Vice-President and Hon. Secretary, Mr. A. H. Goulty ; Hon. Treasurer, Mr. W. E. M. Mainprice.

The report of the Council presented to the meeting showed that the membership is 349, of whom 277 are also members of The Law Society.

One thousand four hundred and twenty-five applications had been dealt with by the Poor Persons Committee, involving as many as 6,100 interviews at the Committee's office and the despatch from the office of over 4,500 letters.

Three hundred and one agency cases had been dealt with on behalf of the Services Divorce Department.

The report of the Manchester and Salford Poor Man's Lawyer Association contained an analysis of 3,081 cases which had been dealt with at the Society's five centres during the year. The analysis showed that approximately 38 per cent. came under the heading " matrimonial and family troubles," 10 per cent., 8½ per cent. and 6 per cent. respectively under headings " landlord and tenant," " workmen's compensation " and " damage and accident," the remaining 37½ per cent. being spread over a variety of other subjects.

Mr. Strange in his presidential address referred in particular to the Society's satisfaction with the terms of the recently published Report of Lord Rushcliffe's Committee on Legal Aid. He congratulated the Council of The Law Society on the virtual acceptance of the scheme submitted by them in evidence before the Committee, the preparation of which had involved a great amount of thought and trouble.

LEGAL RESIGNATION HONOURS

BARON

Sir WILLIAM HENRY DAVISON, M.P. Called by Inner Temple 1895.

PRIVY COUNCILLOR

Sir CUTHBERT MORLEY HEADLAM, Bt., M.P. Called by Inner Temple 1906.

BARONET

Mr. GEORGE STEVEN HARVIE WATT, K.C., M.P. Called by Inner Temple, 1930, and took silk 1945.

KNIGHT

Mr. ALAN PATRICK HERBERT, M.P. Called by Inner Temple 1919.

COMPANION OF HONOUR

Rt. Hon. LEOPOLD STENNETT AMERY. Called by Inner Temple 1901.

NOTES OF CASES

CHANCERY DIVISION

***In re* Custance; Keppel *v.* Douglas**

Cohen, J. 11th July, 1945

Settlements—Construction—Life interest until property charged—Life tenant of unsound mind—Receiver appointed—Charge for receiver's fees—Life interest determined—Lunacy Act, 1890 (53 *Vict. c.* 5), *s.* 148.

Adjourned summons.

Under two settlements made in 1910 and under the will of A, who died in 1925, the properties and investments thereby respectively settled were settled on similar trusts and uses. Such trusts were for D for life and, subject to an annuity for her husband, upon trust, in the events which happened, that the trustees should during the life of D's son, the first defendant, hold the property upon trust, except while the son should be under the age of twenty-five years or while his interest would, if an absolute interest, have become vested in or charged in favour of any other person or persons, to allow the son to receive the trust rents and income; and, during the excepted period, the trustees were directed to hold the rents and income, in effect, upon discretionary trusts for the son, his wife and issue and upon trust to pay any surplus rents and income to the person who would be entitled thereto if the son were dead. D died in 1944 and her husband in 1945. The son, who was born in 1902, was of unsound mind. He was a bachelor. The second defendant was entitled to the settled premises subject to the son's interest. A receiver had been appointed of the son's estate in 1929 under 53 Vict. c. 5. This summons raised the question whether the appointment of the receiver had determined the son's life interest. Section 148 (3) of the Act provides that the fees fixed by the Lord Chancellor in proceedings relating to lunatics and their estates "shall be charged upon the estate of a lunatic, and be payable thereout."

COHEN, J., said that it was clear first that the income to which the son had become entitled had become payable to the receiver, secondly, that a charge on the estate of the son was created by s. 148 (3) by reason of the appointment of a receiver. It was established by authority that the mere fact that the income was payable to the receiver did not bring the discretionary trusts into operation: *In re Marshall* [1920] 1 Ch. D. 284, *per* Eve, J. The attention of the court had not, however, previously been called to s. 148 (3) and it was argued that, as the subsection clearly created a charge on the son's income, it must necessarily bring the discretionary trusts into operation. It was contended on the other hand that the charge was merely to secure payment of expenses reasonably incurred in the management of the estate and the charge was not within the mischief against which the discretionary trust was intended to guard (*In re Tancred's Settlement* [1903] 1 Ch. 715). He could not accept that argument. He would be straining the law if he were to hold that fees payable to the percentage account and applicable as part of the vote for the Supreme Court of Judicature were analogous to remuneration to an agent appointed by act of party or by statute. He would declare that the several settled properties were now held by the trustees upon the discretionary trusts.

COUNSEL: *E. M. Winterbotham; A. G. N. Cross; Guest Mathews.*

SOLICITORS: *Sharpe, Pritchard & Co.*, for *Foster, Calvert and Marriott*, Norwich; *Gilbert Samuel & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION

Kay *v.* Butterworth

Humphreys and Cassels, JJ. 7th June, 1945

Road traffic—Driver overcome by sleep while driving—Accident—Whether liable criminally.

Case stated by Bury justices.

Informations were preferred by the appellant police superintendent, charging the respondent driver with contravening ss. 11 and 12 respectively of the Road Traffic Act, 1930, by driving a motor-vehicle to the danger of the public and without due care and attention and without reasonable consideration for other persons using the road. The following facts, *inter alia*, were established before the justices: At about 9 a.m. on 29th August, 1944, the driver drove his motor-car into the rear of a party of thirty-six American soldiers who were marching in a column in the same direction, and sixteen were injured. He had been working throughout the night until 7.45 a.m. at an aircraft factory. At or immediately before the accident he was overcome by sleep or drowsiness. He contended that by reason that he was overcome by sleep or drowsiness he was not conscious of or responsible for his actions. The justices held that as he was temporarily unconscious he could not be guilty of any offence. They accordingly dismissed the informations.

HUMPHREYS, J., said that a person who drove a car into the rear of a party of other persons in broad daylight when the visibility was perfectly good was guilty of a number of offences. If a driver allowed himself to drive while he was asleep he was at least guilty of the offence of driving without due care and attention, because it was his business to keep awake. If drowsiness overtook him while driving he should stop and wait until he shook it off and was wide awake. A person, however, who, through no fault of his own, became unconscious while driving, for example, by being struck by a stone or by illness, ought not to be liable at criminal law. In the present case the driver must have known that drowsiness was overtaking him. The case was too clear for argument. The appeal must be allowed, and the case go back to the justices with a direction to find the offence proved.

CASSELS, J., agreed.

COUNSEL: *Heathcote-Williams.* There was no appearance by or for the driver.

SOLICITORS: *Gregory, Rowcliffe & Co.*, for *Hall & Smith*, Bury.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Badham *v.* Lamb's Ltd.

du Parcq, J. (sitting as an additional judge). 12th June, 1945

Motor car—Sale with defective brakes in breach of statutory duty—Whether vendor's breach gives purchaser a right of action—Road Traffic Act, 1930 (20 & 21 *Geo.* 5, c. 43), *s.* 3 (1)—*Road Traffic Act*, 1934 (24 & 25 *Geo.* 5, *c.* 50), *s.* 8 (1)—*Motor Vehicles (Construction and Use) Regulations*, 1941 (*S.R. & O.*, 1941, *No.* 398), *regs.* 39, 68.

Action for damages for breach of contract and of statutory duty.

The plaintiff bought a second-hand 1936 motor car from the defendant company. The contract of sale, which was partly handwritten and partly printed, contained a term that no warranty, representation or guarantee as to the quality or fitness for any purpose of the car was given by the seller or was to be implied by statute, common law, or otherwise. After the car had been driven some 27 miles by the plaintiff, it became involved in a collision, which caused him loss. The brakes, as found by du Parcq, L.J., were not completely efficient in that, through leakage, oil had invaded the brake-drums of the rear wheels, the brakes accordingly not being fully reliable when the plaintiff was faced with the emergency, and the car therefore not being reasonably fit for use on the road. By s. 3 (1) of the Road Traffic Act, 1930, it is unlawful to use on any road a motor vehicle which does not comply with the regulations applicable to it. By s. 8 (1) of the Road Traffic Act, 1934, which Act is to be read as one with that of 1930, "it shall not be lawful to sell, or to supply . . . a motor vehicle . . . for delivery in such a condition that the use thereof on a road in that condition would be unlawful by virtue of . . . s. 3 of the" Act of 1930. By reg. 39 of the Motor Vehicles (Construction and Use) Regulations, 1941, "every motor car shall be equipped with an efficient braking system . . ." By reg. 68 " . . . every part of every braking system . . . shall . . . while the motor vehicle is used on a road, be maintained in good and efficient working order and shall be properly adjusted."

DU PARCQ, L.J., said that, as the condition in the contract excluding any warranty, representation or guarantee by the defendants as to the quality, etc., of the car was applicable, the plaintiff's only remedy, if any, was for breach of statutory duty. If reg. 39 was to be construed as meaning "reasonably satisfactory," those words must be taken as meaning so satisfactory that any reasonable man would be satisfied with them, and that would necessarily involve something near perfection in the matter of brakes. It was of the highest importance that it should be understood that for the purposes of reg. 39 it was not sufficient for brakes to be merely good enough: they must be good enough to use in an emergency so as to avoid an accident. But for a sudden stress brakes might not for some time reveal a defect. There had accordingly been a breach of the statutory duty laid down in s. 8 (1) of the Act of 1934. The question was whether that gave the plaintiff a right of action. It was argued that the object of the Legislature was to protect the purchaser. The Act, however, did not say so; it provided that the sale of a car which did not conform to the regulations should be punishable by a fine of £20. The purchaser was able to look

after himself, and usually relied on the seller, who knew more about the car he was selling than even the expert purchaser. Even if the purchaser entered into no express contract, he would have a cause of action if the car were not reasonably fit for the purpose for which it was known to be intended—unless he were so misguided as to deprive himself of that remedy. He could provide by contract against defects in the car. The purpose of the Legislature, in his (his lordship's) opinion, was to deal with the matter at or near the source. It wanted to avoid the plea by the owner of a car, that he was not to blame for its non-compliance with the regulations because he had relied on the purchaser, by forbidding its sale in that condition of non-compliance. The case was distinguishable from *Monk* v. *Warbey*, [1935] 1 K.B. 75; 78 SOL. J. 783; but *Phillips* v. *Britannia Hygienic Laundry, Ltd.* [1903] 2 K.B. 832,; 68 SOL. J. 102, was applicable. As pointed out in *Pasmore* v. *Oswaldtwistle Urban District Council* [1898] A.C. 387, the general rule was that, where a specific remedy was given, it deprived the subject of any other form of remedy. The present case was no exception from that rule, and there must be judgment for the defendants.

COUNSEL: *Ronald Hopkins; Hale.*

SOLICITORS: *J. H. Fellowes; Cartwright, Cunningham & Co.*

Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Dorman, Long & Co., Ltd. *v.* **Carroll and Others**

Humphreys and Croom-Johnson, JJ. 19th June, 1945

Master and servant—Colliery—Workmen's contract of employment terminable by fourteen days' notice—Arrangement to work two shifts instead of one on Saturdays—Not a variation of original contract—Termination of arrangement by eight days' notice not a breach—Employers and Workmen Act, 1875 (38 & 39 *Vict. c.* 90), *s.* 9.

Case stated by Durham (County) Justices.

The appellant company took proceedings under the Employers and Workmen Act, 1875, against 228 workmen employed in their Sherburn Hill Colliery, of whom three were selected as representative for this appeal, claiming damages from each of the workmen for breach of contract in absenting themselves from work in the second shift on Saturday, the 8th and 22nd July, 1944. The terms of the men's employment were those customary in the County of Durham, termination being only by fourteen days' notice, and each of the workmen signing a document so stating. In January, 1943, with the object of increasing the output of the colliery to meet the demand for coal, a scheme of reorganised working was proposed by the company and accepted by the workmen. From January, 1943, until July, 1944, that scheme was in force, its effect being that two shifts were worked on Saturdays, instead of one as before. Nothing was said about terminating the existing contract of service, or about the time during which the new arrangement was to continue in force. By a letter of the 30th June, 1944, the workmen's representative notified the company that on and from Saturday, the 8th July, only the foreshift would present themselves for work on Saturdays. Accordingly on Saturday, the 8th and 22nd July, the men did not present themselves for work in the second shift, the pit being idle in consequence. It was contended for the company that the arrangement of January, 1943, became part of the men's contract of employment and that to give eight days' notice terminating it and then to fail to turn up for the second Saturday shift was a breach of the contract. It was contended for the workmen that the written contract of employment had never been varied, and remained in force; that the arrangement or agreement for two shifts on Saturdays did not become binding on the parties or part of the contract; and that it was a temporary arrangement terminable by reasonable notice, which had been given. The justices decided in favour of the workmen, and the company appealed.

HUMPHREYS, J., said that there was evidence on which the justices might have found that the new arrangement did become part of the original contract; but they had held that that arrangement was temporary and could be properly terminated by reasonable notice. It was a quite reasonable way to construe the acts of the parties to hold that the original contract was never varied. The so-called scheme of reorganised working was not a variation of the original contract, but merely an alteration of the method of carrying out that contract. The justices had so found. The men were still bound by the obligation to give fourteen days' notice to terminate their contracts of employment. They had not purported to terminate that contract. They had done nothing more than the facts found amply justified, namely, to say to the employers that the time had in their opinion come when longer hours on Saturdays need no longer be worked, and that they would revert to the old system. The European war was still very much in progress in June, 1944, but the men's reasons for deciding to cease working two shifts on Saturdays were immaterial to the appeal. The appeal must be dismissed.

CROOM-JOHNSON, J., agreeing, said that these proceedings against so many people might have been avoided by the simple expedient of having someone in to take notes of what was said when the arrangement was made in January, 1943, so that there was something in writing to make matters clear.

COUNSEL: *J. B. Herbert; Holroyd Pearce.*

SOLICITORS: *Crossman, Block & Co.*, for *William Bell & Sons*, Sunderland; *Corbin, Greener & Cook*, for *J. E. Brown-Humes and Co.*, Bishop Auckland.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

NOTES

Mr. Collingwood Hope, K.C., of Hatfield Peverel, Essex, has resigned, at the age of eighty-six, the office of High Steward of Southwold, which he has held for forty years.

Alderman Mary Sykes, a member of the Labour Party and a solicitor, is to be the next Mayor of Huddersfield. The Town Council has approved a recommendation of the General Purposes Committee that she be nominated for the ensuing year. She was admitted in 1923.

Sir Hartley Shawcross, K.C., the Attorney-General, has been appointed chief prosecutor on behalf of the United Kingdom for the investigation of the charges against, and the prosecution of, the major war criminals under art. 14 of the charter of the international military tribunal annexed to the agreement made between the Governments of the United Kingdom, the United States, the provisional Government of the French Republic and the Government of the U.S.S.R. for the prosecution and punishment of the major war criminals of the European Axis, and signed in London on 8th August, 1945.

It was announced in Rome on 2nd August that Allied control over Italian export trade has been withdrawn and that henceforth the Italian Government and Italian firms will be free to conduct direct transactions with foreign firms. British importers are reminded that trading with the enemy restrictions have not yet been lifted in respect of trade with Italy, so that it is not yet possible to conclude a contract with the Italian Government (or Italian private traders). Inquiries may, however, be made of Italian exporters as to availabilities, terms of sale and prices of goods. British importers are also reminded that when transactions are permitted, import licences will be required for all goods imported into the United Kingdom from Italy which do not come under an open general licence. Import licences will not, in general, be granted for goods not, for the time being, licensed from other countries. Import licences will not normally be considered for food, the import of which will continue to be conducted by the Ministry of Food.

Wills and Bequests

Mr. M. J. Jarvis, solicitor, of Twyford, Berks, left £11,790, with net personalty £11,761. Among other bequests, he left his practice and papers and books to his managing clerk, Mr. Mark Davis.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1945

E.P. 935. **Control of Communcations** (Isle of Man) Order (No. 2).

E.P. 934. Control of Communications Order No. 3. 26th July.

No. 939. **Disabled Persons** (District Advisory Committees and Panels) (Procedure) Regulations. 30th July.

No. 940. Disabled Persons (Non-British Subjects) Regulations. 30th July.

No. 938. Disabled Persons (Registration) Regulations. 30th July.

No. 944/S.35. **Liabilities** (War-Time Adjustment), Scotland, Rules. 24th July.

E.P. 904. **Road Vehicles and Drivers** Emergency Powers (Defence) Road Vehicles and Drivers (Amendment) (No. 2) Order. 24th July.

No. 936. **Trading with the Enemy** (Specified Persons) (Amendment) (No. 9) Order. 31st July.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2]